

MEMORANDUM

Morgan Lewis
C O U N S E L O R S A T L A W

PRIVILEGED AND CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

TO: Sheldon Bonovitz
Robert Mundheim
Ned Montgomery

FROM: John C. Dodds

DATE: January 13, 2014

SUBJECT: **The Curtis Institute of Music/Summary of Investigation**

I. INTRODUCTION

On February 17, 2013, Robert Fitzpatrick, the former Dean of the Curtis Institute of Music posted an essay on Slipped Disc entitled "When Curtis was known as the Coitus Institute." On August 12, 2013, Laura St. John, a graduate of Curtis, sent a letter to Roberto Diaz in reaction to Fitzpatrick's essay. In her letter, St. John expressed outrage at the essay in light of Fitzpatrick's alleged handling, during her time as a student, of what she described as her disclosure that a former Curtis instructor, the late Jascha Brodsky, had sexually abused her. Morgan Lewis was retained to: (a) advise Curtis as to whether it had any reporting obligations based on St. John's letter; (b) advise Curtis as to the type and level of investigation appropriate under the circumstances, and to conduct that investigation; (c) advise Curtis as to whether there is evidence raising any cause for concern about the welfare and safety of current students at Curtis; and (d) advise Curtis as to any enhancements in policies and procedures necessary to protect students going forward.

This memorandum will provide a summary report of our conclusions and recommendations.

II. DISCUSSION

A. Investigation¹

Given the age of St. John's allegations and other related circumstances, and out of respect for St. John as the complainant, we determined that it was appropriate to begin by contacting St. John and to allow her wishes to inform our path forward. Consistent with St. John's letter, I contacted her agent, Stephen Judson, by letter dated October 9, 2013. I subsequently spoke to Judson on two occasions.

¹ The telephone interviews described in this section are summarized in separate memoranda that are being maintained in the file of Morgan Lewis.

Judson reiterated St. John's frustration with the Fitzpatrick essay, but made it clear that St. John did not wish to communicate on the matter any further. This included St. John's allegations that Fitzpatrick and Gary Graffman failed to properly address the situation when she was a student. Rather, her interest was in making sure that Fitzpatrick would not post any similar essays. Judson stated that St. John did not wish to speak with us directly, but that he had any information St. John could provide. Judson further stated that St. John has no information to suggest abuse by anyone besides Brodsky and no information to suggest any risk from anyone associated with Curtis. Judson made clear that St. John did not wish to provide any evidence or other information related to her alleged abuse by Brodsky, and that she had no evidence or other information to suggest any other past or present incidents of abuse.

Judson indicated that he and St. John had consulted a Philadelphia law firm, and decided not to notify the police about the allegations or take any legal action. Judson stated that St. John did not wish to pursue the matter any further and that he did not think that it was in her interests to do so; rather, beyond receiving assurances that Fitzpatrick would post no further essays, St. John wanted only to put this matter behind her.

Judson suggested that we conclude the matter by sending St. John a letter (through him) summarizing our efforts in response to her letter and generally describing the policies and procedures Curtis has in place for the protection of students.

On November 7, 2013, I interviewed Fitzpatrick by telephone. He stated he was surprised that he received criticism for writing the essay. He stated that he wrote the essay in light of recent events in the UK. His intent was not to create the impression of problems at Curtis or any other U.S. institution, but to describe the kinds of positive measures Curtis and other U.S. institutions have taken over the years, and to argue that UK institutions need to get themselves up to the standards of their US counterparts in regard to the protection of students. Fitzpatrick stated that, to the extent that his essay was about Curtis, it referred to a period of time many decades ago. He denied knowledge of any student being subjected to sexual or physical misconduct during or after his tenure at Curtis.² He had no information to suggest that Curtis should have any present concerns about the welfare of its students. He felt that good structures for the protection of students were in place when he left, and believes that Curtis has improved on them since then.

On November 14, 2013, I conducted a telephone interview of Graffman, the former President of Curtis during St. John's enrollment. Graffman confirmed that he reviewed Fitzpatrick's essay prior to its posting, but only to verify the cite to his autobiography and correct information regarding his father. Graffman indicated that, during his time as a student, Curtis had a reputation that justified what Fitzpatrick wrote in his essay. However, he stated that he is aware of no serious issues involving inappropriate sexual contact between faculty and students during

² This denial was obviously at odds with St. John's allegations. However, in light of my discussion with Judson and in deference to St. John's wishes, I asked only general questions on this subject, and did not ask any specific questions related to St. John.

his time as an instructor or as head of the school.³ As detailed in my separate file memorandum, Graffman related various events at Curtis after his tenure as President with which he was concerned. Graffman acknowledged that his information about these events was largely based on hearsay, and directed me to Elizabeth Warshawer for more specific information. I have reviewed these events with Warshawer in detail; none of these events involved sexual misconduct by Curtis personnel.⁴

In sum, the leads provided by St. John, both in her letter and in discussion with Judson, yielded no evidence of inappropriate conduct beyond Brodsky's alleged sexual abuse of St. John, and particularly provided no reason to suspect more recent or present abuse at Curtis. Our communications with current Curtis personnel, including Diaz and Warshawer, have not suggested any more recent or present abuse, and we have received no other evidence suggesting the need for further investigation.

B. Policies and Procedures

We have reviewed the current policies and procedures Curtis has in place and determined that as drafted, they adequately protect the welfare and safety to students. In the Staff Handbook, Faculty Handbook and Student Code of Conduct, Curtis maintains strict policies prohibiting sexual harassment, sexual abuse and sexual relationships among faculty and staff with students. Additionally, there are sound procedures and proper safeguards in place for handling any reports made by students or their families, all of which are consistent with applicable law and with Curtis' focus on protecting students. We provided suggested language to enhance the current versions, but we conclude that the policies and procedures are sound in their current form and comply with the law.

III. CONCLUSION

As we have discussed, Curtis does not have any legal obligation to report St. John's allegations to law enforcement authorities. Further, under the circumstances -- including the age of the allegations, the fact that Brodsky has not been associated with Curtis for a long time and is deceased, St. John's desire that the matter not be pursued, and the lack of any evidence of sexual abuse by Curtis personnel beyond St. John's allegations against Brodsky -- we have advised Curtis against making such a report.

We have found no evidence to suggest any cause for concern about the welfare or safety of current students at Curtis, or that anyone associated with Curtis presents a danger to students.

³ This denial was also at odds with St. John's allegations. However, as with Fitzpatrick, I asked only general questions on this subject, and did not ask any specific questions related to St. John.

⁴ This included a situation in which a student committed suicide after Curtis fired a staff member the student had accused of inappropriate behavior. It was later determined that the student's suicide was related not to any interactions with the staff member, but to a prolonged history of mental illness. This situation is described in more detail in my file memorandum.

We have followed the leads available in relation to the allegations before us, and do not believe that further investigation is warranted.

We recommend that Curtis consider the relatively modest changes we have suggested to the handbooks and policies, and that it routinely review and update its policies, procedures and training, especially considering the evolving legal requirements of Pennsylvania's mandatory reporting laws.

JCD